

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
 100 North City Parkway, Suite 1600  
 Las Vegas, NV 89106-4614  
 702.382.2101

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
 NIKKI L. BAKER, ESQ., Nevada Bar No. 6562  
 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
 100 North City Parkway, Suite 1600  
 Las Vegas, NV 89106-4614  
 Telephone: 702.382.2101  
 Facsimile: 702.382.8135  
 Email: klenhard@bhfs.com  
 Email: nbaker@bhfs.com

DENNIS H. HRANITZKY, ESQ.  
 (admitted *pro hac vice*)  
 DECHERT LLP  
 1095 Avenue of the Americas  
 New York, NY 10036-6797  
 Telephone: 212.698.3500  
 Facsimile: 212.698.3599  
 Email: dennis.hranitzky@dechert.com

*Attorneys for NML Capital, Ltd.*

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

NML CAPITAL, LTD.,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

CASE NO.: 2:14-cv-00492-JAD-VCF

**NML CAPITAL, LTD.’S RESPONSE TO  
 NON-PARTY WITNESS PATRICIA  
 AMUNATEGUI AND M.F. CORPORATE  
 SERVICES (NEVADA) LIMITED’S  
 LIMITED OBJECTION TO  
 MAGISTRATE’S ORDER PURSUANT TO  
 FED. R. CIV. P. 72**

Plaintiff NML Capital, Ltd. (“NML”), by and through its attorneys of record Brownstein Hyatt Farber Schreck, LLP and Dechert LLP, hereby submits this response to the “Limited Objection to the Magistrate’s Order” made by non-party witness Patricia Amunategui and M.F. Corporate Services (Nevada) Limited (“MF Nevada,” and together with Amunategui, the “Objectors”).

**TABLE OF CONTENTS**

	Page
TABLE OF AUTHORITIES .....	ii
INTRODUCTION .....	1
FACTUAL AND PROCEDURAL BACKGROUND .....	1
ARGUMENT .....	2
I.    The Court’s Finding That Ms. Amunategui Advertised Herself As The Vice President Of Mossack Fonseca’s Nevada Office Was Not Clearly Erroneous .....	2
II.   The Finding That Ms. Amunategui’s Email Signature Identifies Her As The Head of Mossack Fonseca’s Nevada Office Was Not Clearly Erroneous .....	4
CONCLUSION .....	5

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**  
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Las Vegas, NV 89106-4614  
702.382.2101

**TABLE OF AUTHORITIES**

<i>Bray v. Cnty. of San Diego</i> , 1994 WL 65305 (9th Cir. Mar. 2, 1994) .....	3
<i>Villiarimo v. Aloha Island Air, Inc.</i> , 281 F.3d 1054 (9th Cir. 2002) .....	3, 4

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## **INTRODUCTION**

NML submits this response for the limited purpose of responding to the objection lodged by MF Nevada and Ms. Amunategui in response to Magistrate Judge Ferenbach's order of February 19, 2015 (ECF No. 82) (the "Order"), unsealing certain portions of the record, including Ms. Amunategui's deposition testimony. Despite Ms. Amunategui's previous attempts to explain away a magazine ad and her own email signature—both of which promote her affiliation with Mossack Fonseca & Co. ("Mossack Fonseca")—those documents speak for themselves in establishing that Ms. Amunategui held herself out as the head of Mossack Fonseca's Nevada office. Moreover, the Court's plain reading of those documents was corroborated by substantial record evidence demonstrating that Ms. Amunategui does, in fact, serve as head of Mossack Fonseca's Nevada office. The Objectors' objection is therefore without merit.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On September 11, 2014, Ms. Amunategui was deposed in this matter. Among other things, Ms. Amunategui testified at her deposition that Mossack Fonseca is MF Nevada's only client and represents its sole source of revenue, and that MF Nevada's sole substantive function is to form Nevada LLCs for Mossack Fonseca's customers.<sup>1</sup> Ms. Amunategui further testified that pursuant to her employment agreement (signed by Jurgen Mossack and Ramon Fonseca), she receives all of her instructions as to the substantive business of MF Nevada from Mossack Fonseca personnel—with whom she communicates almost exclusively in connection with the performance of her job responsibilities.<sup>2</sup> Finally, Ms. Amunategui testified that Mossack Fonseca handles many of the day-to-day operations of MF Nevada, including its accounting, human resources, and IT support.<sup>3</sup>

Mossack Fonseca holds itself out to the world as having an office in Nevada, and actively markets the services it can provide to its clients through that office—in particular, its ability to

<sup>1</sup> Deposition of Patricia Amunategui, dated Sept. 11, 2014 ("Amunategui Dep."), at 27:8-16, 28:16-25, 38:22-39:13, 138:19-139:22 (Exhibit C to MF Nevada Resp./Reply (ECF No. 90-1)).

<sup>2</sup> *Id.* at 53:4-54:15, 55:22-56:1, 56:10-13; Amunategui Employment Contract (Exhibit H to NML Mot. to Compel MF Nevada (ECF No. 102-1)).

<sup>3</sup> Amunategui Dep. at 65:8-16, 133:18-134:10 (Exhibit C to MF Nevada Resp./Reply (ECF No. 90-1)).

1 create and maintain Nevada LLCs.<sup>4</sup> Mossack Fonseca touts the presence of its “skilled  
2 personnel” in Nevada, which Ms. Amunategui testified at her deposition was a reference to her.<sup>5</sup>

3 Ignoring this evidence that MF Nevada functions as the Nevada office of Mossack  
4 Fonseca, the Objectors contend that the Court erred in finding in the order that Ms. Amunategui  
5 advertised her affiliation with Mossack Fonseca (1) through her email signature which identifies  
6 her as “Head of Nevada Office” for Mossack Fonseca’s Nevada branch, and (2) in an  
7 advertisement for UNLV, in which she is quoted as describing herself as “the Vice President of  
8 the Nevada office of Mossack & Fonseca, an international law firm specializing in international  
9 trusts and corporate services with 44 offices worldwide.” Obj. at 9-11. In essence, the Objectors  
10 argue that the only evidence the Court should have considered in determining how to interpret  
11 Ms. Amunategui’s email signature, and what weight to give to the UNLV advertisement, was Ms.  
12 Amunategui’s own self-serving deposition testimony. According to the Objectors, it was  
13 improper for the Court to consider the email signature and UNLV advertisements themselves in  
14 the context of other record evidence of MF Nevada’s actual status as Mossack Fonseca’s Nevada  
15 office in making these determinations.

### 16 ARGUMENT

17 The Objectors are wrong. In interpreting the email signature and UNLV advertisement,  
18 Magistrate Judge Ferenbach was entirely within his discretion to give greater weight to other  
19 evidence in the record that MF Nevada is, in fact, Mossack Fonseca’s Nevada office than Ms.  
20 Amunategui’s own testimony.

#### 21 **I. The Court’s Finding That Ms. Amunategui Advertised Herself As The Vice** 22 **President Of Mossack Fonseca’s Nevada Office Was Not Clearly Erroneous.**

23 As a threshold matter, the Objectors are wrong in contending that it was improper for the  
24 Court to consider the advertisement because it is inadmissible evidence. Obj. at 9. The motion to  
25 seal was made in connection with a series of motions dealing with NML’s post-judgment

26 <sup>4</sup> Mossack Fonseca Marketing Literature, at p. 24 “Shelf Company Reservation” (Exhibit C to NML Reply in Supp.  
27 of Mot. to Compel MF Nevada (ECF No. 66-4)); Mossack Fonseca webpage “Nevada, USA” (Exhibit L to NML  
28 Mot. to Compel MF Nevada (ECF No. 59-14)).

<sup>5</sup> Mossack Fonseca webpage “Nevada, USA” (Exhibit L to NML Mot. to Compel MF Nevada (ECF No. 59-14));  
Amunategui Dep. at 116:2-15 (Exhibit C to MF Nevada Resp./Reply (ECF No. 90-1)).

1 discovery efforts, and the “rules of evidence do not apply to discovery proceedings.” *Bray v.*  
 2 *Cnty. of San Diego*, 1994 WL 65305, at \*4 n.3 (9th Cir. Mar. 2, 1994). It is therefore immaterial  
 3 whether the advertisement constituted inadmissible hearsay.

4 The Objectors are also wrong in contending that it was uncontroverted in the record that  
 5 the statements attributed to Ms. Amunategui in the advertisement were inaccurate. Obj. at 10.  
 6 Ms. Amunategui conceded at her deposition that the advertisement was based on an interview she  
 7 gave to UNLV staff.<sup>6</sup> The fact that the advertisement actually ran—and that the statements  
 8 attributed to Ms. Amunategui were never retracted—is, itself, evidence that Ms. Amunategui  
 9 sanctioned its content. The Court was well within its discretion to find this evidence more  
 10 credible than Ms. Amunategui’s uncorroborated, self-serving testimony that she was misquoted in  
 11 the advertisement. *See Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002)  
 12 (a court need not credit self-serving testimony unsupported by corroborating evidence and  
 13 undermined by other credible evidence).

14 Next, there is no basis for the Objectors’ suggestion that the status of Ms. Amunategui’s  
 15 relationship with Mossack Fonseca has changed since the UNLV advertisement was published.  
 16 *See* Obj. at 10 (“[T]he advertisement at best only purports to relate the state of affairs between  
 17 Ms. Amunategui and Mossack Fonseca at 2009, when the advertisement was made.”). To the  
 18 contrary, the record—including Ms. Amunategui’s deposition testimony—is replete with  
 19 evidence of Ms. Amunategui’s continued relationship with Mossack Fonseca as the head of its  
 20 Nevada office. Ms. Amunategui testified that all of the directions and instructions for the  
 21 operation of MF Nevada come from Mossack Fonseca, and that while in her capacity as an office  
 22 manager she may manage office operations, she acts only at the instruction of MF Nevada’s sole  
 23 client, Mossack Fonseca.<sup>7</sup> In any case, whether the advertisement reflects the current relationship  
 24 between Ms. Amunategui and Mossack Fonseca is irrelevant. In ordering the record unsealed,  
 25 Magistrate Judge Ferenbach merely stated that “Ms. Amunategui *has* advertised herself as ‘the  
 26 Vice President of the Nevada office of Mossack & Fonseca.’” Order at 10 (emphasis added).

27 \_\_\_\_\_  
 28 <sup>6</sup> Amunategui Dep. at 79:21-81:24 (Exhibit C to MF Nevada Resp./Reply (ECF No. 90-1)).

<sup>7</sup> Amunategui Dep. at 53:16-54:15, 55:22-56:13 (Exhibit C to MF Nevada Resp./Reply (ECF No. 90-1)).

1 The purpose of this finding was to demonstrate that Ms. Amunategui previously publicized her  
 2 affiliation with Mossack Fonseca such that no further injury would be caused by disclosure of the  
 3 same. *Id.*

4 Finally, MF Nevada and Ms. Amunategui point to evidence that they claim shows that MF  
 5 Nevada and Mossack Fonseca are “separate” companies. But that argument was squarely  
 6 rejected in Magistrate Judge Ferenbach’s March 16, 2015, order in which he found that MF  
 7 Nevada is the alter ego of Mossack Fonseca “because both companies share a unity of interest  
 8 and ownership and the failure to disregard the separate identities would result in fraud or  
 9 injustice.” Order, *NML Capital Ltd. v. Republic of Argentina*, Case No. 2:14-cv-00492 (D. Nev.  
 10 Mar. 16, 2015) (“Mot. to Compel Order”), at 21.

11 **II. The Finding That Ms. Amunategui’s Email Signature Identifies Her As The**  
 12 **Head of Mossack Fonseca’s Nevada Office Was Not Clearly Erroneous.**

13 Nor was it error for the Court to find that Ms. Amunategui’s signature block identifies her  
 14 as the “Head of Nevada Office” for Mossack & Fonseca’s Nevada branch. Obj. at 11. It is true  
 15 that the words “Mossack & Fonseca” do not appear in Ms. Amunategui’s signature block.  
 16 However, as discussed in the preceding section, the Court has already found that Mossack  
 17 Fonseca controls MF Nevada, and that MF Nevada functions as Mossack Fonseca’s Nevada  
 18 office. Mot. to Compel Order at 21-23. The evidence supporting this finding includes Ms.  
 19 Amunategui’s employment contract and testimony, which show that she is required “to submit to  
 20 Mossack Fonseca & Co.’s directions and control” and the fact that Mossack Fonseca “provides  
 21 [MF Nevada] with human-resources and information-technology services and advertises [MF  
 22 Nevada] as part of Mossack Fonseca & Co. on its website.” *Id.* at 21. When Ms. Amunategui’s  
 23 email signature designating her as “Head of Nevada Office” is considered together with the  
 24 evidence on which that finding was based, it was only logical for the Court to conclude that she  
 25 was referring to the Nevada office of Mossack Fonseca.

26 In the face of all this evidence, the Court was not required to credit to Ms. Amunategui’s  
 27 post hoc, self-serving testimony that she was not referring to the “Nevada office” of Mossack  
 28

1 Fonseca. *See Villiarimo*, 281 F.3d at 1061 (court may disregard “uncorroborated and self-serving  
2 testimony” in resolving issues of fact) (internal quotations omitted).

3 **CONCLUSION**

4 For each of the reasons set forth above, NML respectfully requests that the Court overrule  
5 MF Nevada and Ms. Amunategui’s limited objection to the Order.

6 DATED this 19<sup>th</sup> day of March 2015.

7 BROWNSTEIN HYATT FARBER  
8 SCHRECK, LLP

9 By: /s/ Nikki L. Baker  
10 Kirk B. Lenhard, Esq.  
11 Nevada Bar No. 1437  
12 Nikki L. Baker, Esq.  
13 Nevada Bar No. 6562  
14 100 North City Parkway, Suite 1600  
15 Las Vegas, NV 89106-4614

16 Dennis H. Hranitzky  
17 (admitted *pro hac vice*)  
18 Dechert LLP  
19 1095 Avenue of the Americas  
20 New York, NY 10036-6797

21 *Attorneys for NML Capital, Ltd.*

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
702.382.2101



**CERTIFICATE OF SERVICE**

Pursuant to Fed.R.Civ.P.5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **NML CAPITAL, LTD.'S RESPONSE TO NON-PARTY WITNESS PATRICIA AMUNATEGUI AND M.F. CORPORATE SERVICES (NEVADA) LIMITED'S LIMITED OBJECTION TO MAGISTRATE'S ORDER PURSUANT TO FED. R. CIV. P. 72** was served via electronic service to all electronic registered CM/ECF users in this matter, and via U.S. Mail, postage prepaid, on the date and to the address shown below:

Carmine D. Boccuzzi, Jr., Esq.  
CLEARLY, GOTTLEIB, STEEN & HAMILTON, LLP  
One Liberty Plaza  
New York, NY 10006  
*Counsel for Defendant The Republic of Argentina*

DATED this 19<sup>th</sup> day of March, 2015.

/s/ Paula Kay  
an employee of Brownstein Hyatt Farber Schreck, LLP

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
702.382.2101